

WEC: BENJAMIN, LEVESQUE

(SCM ENERGY ROOM)

8/8/14

CB&amp;I: LYNN, DIPIERRO, HOLLENBACH

SCM/SEEG: BYRNE, ADOLSON, ANCHIC, JONES, WALKER, SMITH

- JEFF INITIATED CHALLENGES TO IMPROVE COMMERCIAL RESOLUTION EFFICIENCY
- CURRENT BUSINESS APPROACH NOT SUSTAINABLE

## Characterization of Commercial Problems

- SAFETY: BLDG LOGISTICS
- NUCLEAR SAFETY: CURRENT VERSION OF "CURRENT" ODP PUBLICATION.
- MAINTAIN RESPECTFUL WORK ENVIRONMENT - TRY TO SEEK UNDERSTANDING AND COMMON GROUND - WORK ON COLLABORATIVE
- Safety Topic/Nuclear Safety Topic
- Organization

- IN 5 YRS,  
6 COMMERCIAL  
LEADS FROM  
CB&I.

- SHIMADA,  
GUSTAFSON }  
OWNER NEED:

The Consortium and Owners' Commercial team are not aligned. The Consortium, more specifically CB&I, has experienced an unacceptable level of turnover in the CB&I commercial team lead position. This turnover rate creates inefficiencies in driving resolutions for significant commercial issues.

2. INSTRUMENTAL IN GETTING COIT AGREEMENT - 9 MONTHS BACK/FORTH ON LANGUAGE.  
- BETTER COUNTERPART FOR CHARLETTE  
- REVIEW PROJECT EXECUTION PLAN

- Timely Reconciliation

The owner believes that the current Consortium regime, as well as previous consortium regime, intentionally delays response to the owner with data requested in performing its due diligence. This delay, whether intentional, or not, results in issues piling up and becoming worse.

- Project Control Function

The Owner believes that the project control function within the construction entity is broken. The Construction Entity has attempted to put checks and balances in place to cure this issue by putting an "Owner Support Services" (OSS) function together.

- Transparency

The Owner does not see the Consortium working with the Owner transparently. Consortium has consistently denied the customer the right to

*view documents until which time that Senior Executives have been called in to the request.*

- **Contract Interpretations**

*The Owners and the Consortium fundamentally disagree that the Owner has the right to hold the Consortium responsible to operate prudently based on "good industry practices". The Consortium maintains that the Contractor is "solely responsible for all construction means, methods, etc...." and any expenses incurred by the Consortium under Target Price Work Scope are 100% reimbursable. Owner has witnessed, on numerous occasions, the Consortium acknowledging they understand the Owners' intent, but unfortunately that is not what the contract says. And on the Flip-side, the Consortium has presented "mistakes" in the contract and has expected the Owner to honor the Consortium's intent.*

- **EPC Agreement Ambiguity and Contradiction**

*As with any contract for a major construction project, all of the terms and work scope are not described in such a way as to eliminate ambiguity during the execution of the contract.*

- **Credibility**

*The Owners Commercial team does not trust the Consortiums' Commercial teams.*

- **Communication within Consortium**

*The Owners Commercial team does not believe the two parties to the Consortium have positive and constructive relationship*

- **Consortium Governance Reviews**

*The Consortium Governance review process is often protracted and has an impact on the Commercial teams achieving resolution for issues. On many occasions, the requirement for Governance Review has prevented open discussion between the parties and collaboration on the resolution of commercial issues. It appears that Consortium Project Management has very little authority to negotiate changes.*

Meeting w/ Consortium Executives (8/8@CHQ) - attendees: Steve Byrne, Jimmy Addison, Jeff Archie, Carlette Walker, Ron Jones, Skip Smith, Michael Crosby, Marion Cherry, Jeff Benjamin, Chris Leveque, Jeff Lyash, Don Depierro, Ken Hollenbach

**Crosby, Michael**

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**From:** Hood, Jane  
**Sent:** Thursday, November 13, 2014 3:52 PM  
**To:** Carter, Lonnie  
**Cc:** Armfield, Jeff; Ritter, Suzanne; Crosby, Michael  
**Subject:** Estimated Cost of New Nuclear Delay

Based upon information currently available, Michael, Suzanne, and I developed the estimates below for the cost impact of the delayed completion of VC Summer 2&3. These estimates will require updating and additional scrutiny should other legal steps be desirable, but can be used to estimate the value of the projects finishing as close to the original schedule as possible.

### **Estimated Cost of VC Summer 2&3 Delay in Substantial Completion**

**Delays to date:**

<b>VCS 2</b>	<b>March 2017 - June 2019</b>	<b>27 months</b>
<b>VCS 3</b>	<b>May 2018 - June 2020</b>	<b>25 months</b>

**Estimated cost impacts**

Fuel and Power Replacement	\$455,000,000
Owner's Cost	\$195,000,000
Debt Service	<u>\$365,000,000</u>
	<b>\$1,015,000,000</b>

**Annual cost of 27 month delay** **\$450,930,278**

**Monthly cost of delay** **\$37,577,523**

**Daily cost of delay** **\$1,235,425**

**Notes:**

- \* Debt service estimate does not include any potential costs attributed to a downgrade in credit rating (approximately \$100M-\$200M in financing cost for a 1 credit downtick and 2 credit downtick respectively)
- \* Fuel and Power Replacement based upon April 2014 Fuel Forecast





**Crosby, Michael**

**From:** Crosby, Michael  
**Sent:** Monday, April 06, 2015 4:30 PM  
**To:** sbyrne@scana.com  
**Cc:** 'ARCHIE, JEFFREY B'; Cherry Marion; Cherry, Marion  
**Subject:** VCS - NND - Target Cost  
**Attachments:** 2015 04 06 - EPCA Target Cost & Pct Comp DCL Charts.pptx

Steve,

As you know, Marion worked with Business and Finance to produce the following charts that were discussed in the Executive Steering Committee meeting on Mar 6:

1. Direct Craft Productivity (EPC basis 1.0 ... EAC basis going forward 1.15)
2. Indirect to Direct Craft Labor Ratio (EPC basis 0.38 ... EAC basis going forward 0.39)
3. Field Non-Manual to Direct Craft Labor Ratio (EPC basis 0.51 ... EAC basis going forward 0.53)
4. Percent Complete – Direct Craft Work

As follow-on to this effort a ... **Total Target Cost chart** ... has been added to the package (see last slide in attached file).

The new chart is a good visual aid which projects the (end-view) total target cost impact of the Consortium's poor management of productivity and labor ratios.

In the top left corner of the new chart ... a table is provided which summarizes the key inputs that generate the total target cost curves.

The top row of the table (highlighted yellow) ... is an average of the actual numbers recorded on the project over the 5 month period (Sep 2014 – Jan 2015). A total target cost curve for this data is not shown on the graph because it would be off the chart.

As you recall upon receiving the EAC (August 2014), the Consortium promised to self-correct and drive productivity and the labor ratios back (closer) to the EPC basis.

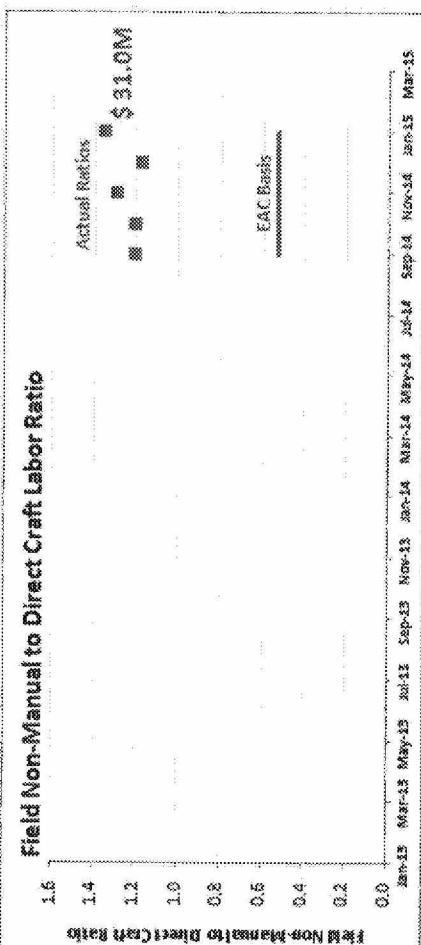
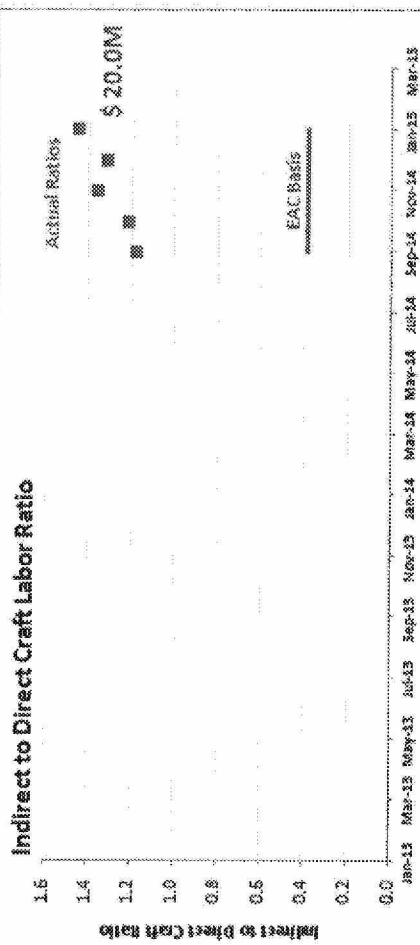
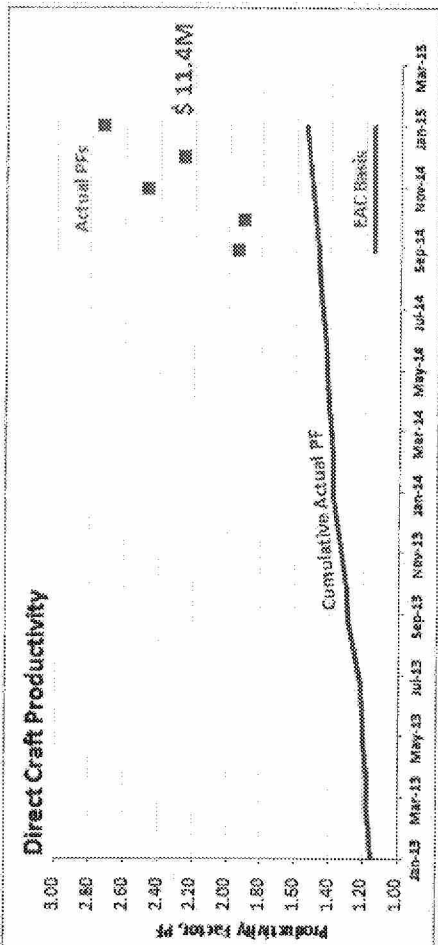
Scenario 1 and 2 (curves) ... demonstrate how improvements to productivity factor and labor ratios drive the curves down ... but still result in cumulative target costs that are significantly over budget.

Both the EAC and Entitlement curves ... demonstrate that to achieve the target costs projected by the EAC ... the Consortium must perform in accordance with numbers that closely track the contract basis.

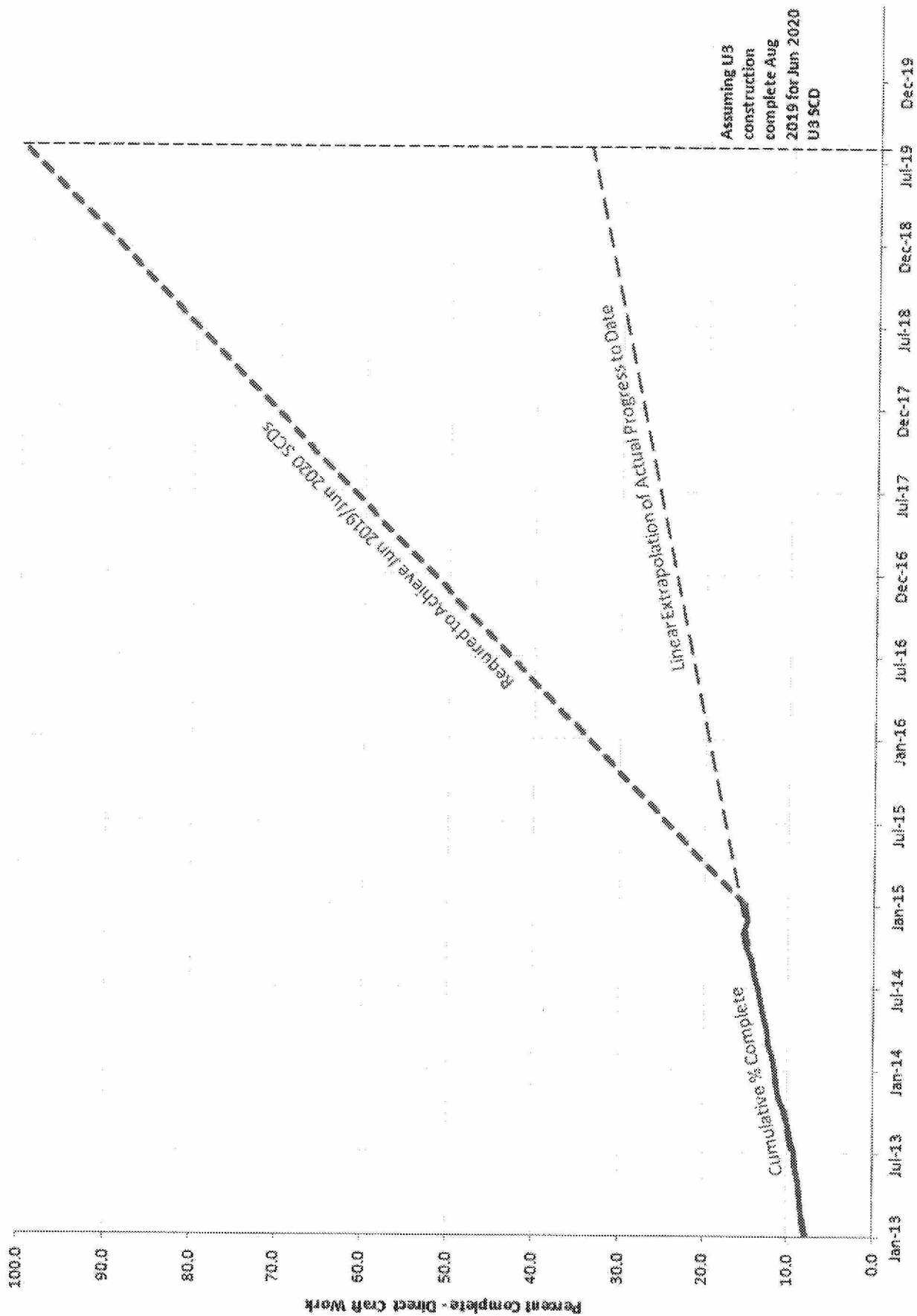
Additional details on the new chart:

1. All numbers shown are at 100%.
2. Baseline reference: Cumulative cost of \$2,281M ... is the EPC contract based on the July 2012 settlement totaling \$1,936M escalated.
3. Entitlement curve: Cumulative cost of \$358M above the baseline ... is the EAC Design Finalization and Change Orders minus LDs with escalation added. For SCE&G at 55% ... this is the \$72M (design finalization) and \$56M (change orders) filed in the current PSC petition.

Target Cost - \$62.4M over EAC basis in 5 months following receipt of EAC



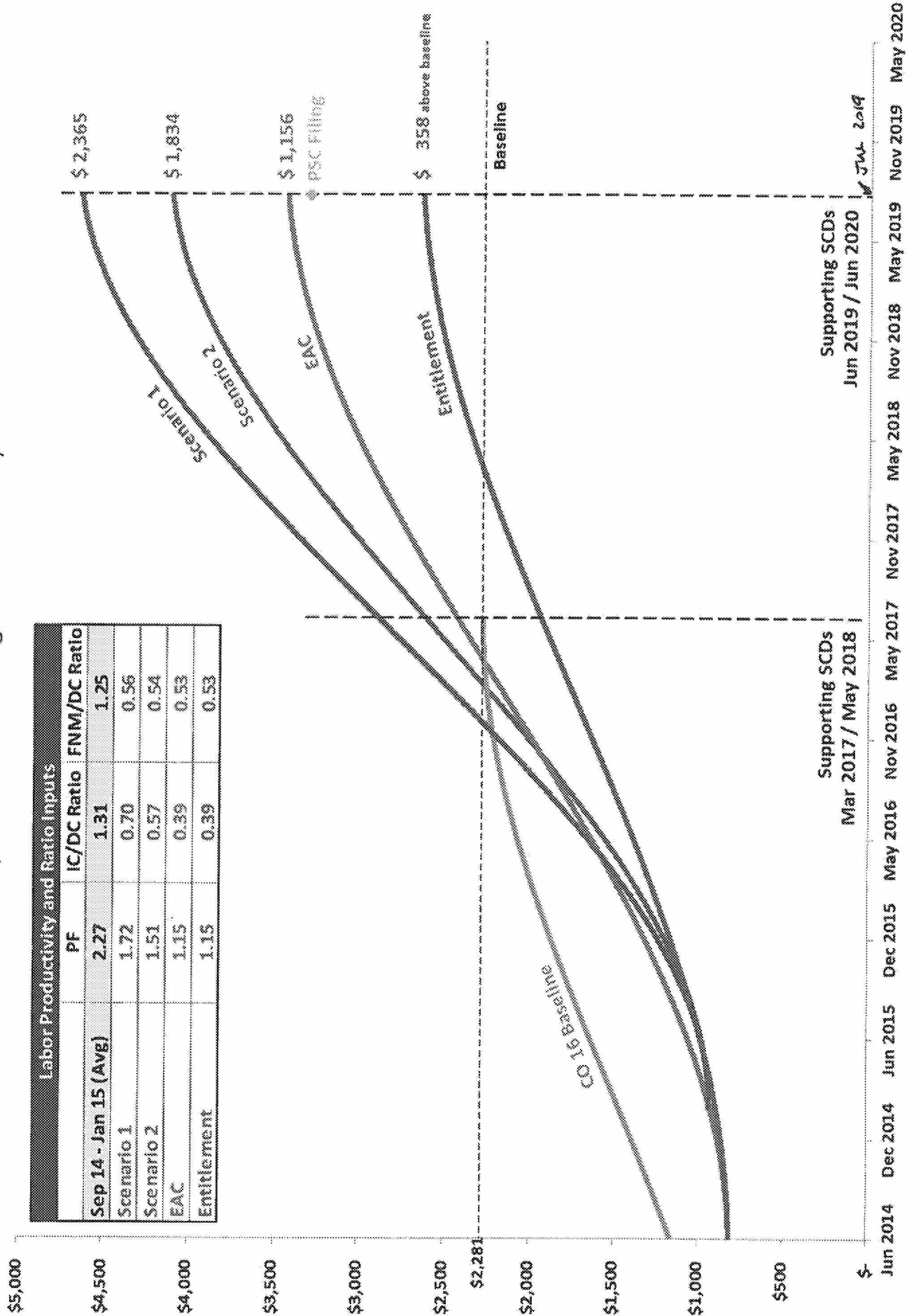
## Percent Complete - Direct Craft Work



# Total Target Cost

(\$ Millions - 100% Figures - Escalated)

Labor Productivity and Ratio Inputs				
	PF	IC/DC Ratio	FNM/DC Ratio	
Sep 14 - Jan 15 (Avg)	2.27	1.31	1.25	
Scenario 1	1.72	0.70	0.56	
Scenario 2	1.51	0.57	0.54	
EAC	1.15	0.39	0.53	
Entitlement	1.15	0.39	0.53	





June 19, 2014  
NND-14-0354

Chris Levesque  
Westinghouse Electric Company  
Nuclear Power Plants  
1000 Westinghouse Drive, Suite 112  
Cranberry Township, PA 16066

Subject: V.C. Summer Units 2 and 3 Guaranteed Substantial Completion Dates

Reference: (1) Engineering, Procurement, and Construction Agreement for AP 1000  
Nuclear Power Plants, Dated May 23, 2008 – V.C. Summer Units 2  
and 3  
(2) VSP\_VSG\_002024, dated August 6, 2012

Dear Mr. Levesque,

The Consortium is in the process of preparing another re-baseline of the project work schedule. You had previously promised to provide that document by May 30, 2014, but we now understand that you anticipate taking an additional six weeks to prepare it. We urge you to deliver the new work schedule as soon as you are able because we need to advise third parties of your latest projections. We also remind you that we expect the upcoming re-baselined work schedule to include all mitigation measures reasonably possible to ensure completion of Units 2 and 3 on or near the currently projected completion dates.

We also wish to remind you that the current progress payment schedules are out of sync with the currently anticipated completion dates for units 2 and 3 substantial completion. Consequently, the payment schedules in their current form would require payment for progress well in advance of when it is actually achieved. This problem will likely remain and may get worse with the upcoming re-baselined work schedule. We plan to address this problem, once we receive the new re-baselined work schedule, by adjusting the progress payment schedules so that they coordinate with the re-baselined project work schedule.

The Consortium has found it necessary to again re-baseline the work schedule because of the Consortium's own performance deficiencies. We anticipate that the upcoming re-baselined work schedule will continue to show substantial completion of Unit 2

and Unit 3 well past the dates established in the parties' agreement of July 11, 2012. The Consortium is responsible for bearing all costs associated with its unexcused delays, including all escalation costs. Consequently, effective immediately, we will no longer pay the portion of escalation costs that is associated with the Consortium's unexcused delays. Additionally, we plan to adjust future escalation payments to account for escalation we have overpaid since we executed the July 11, 2012 agreement.

Please advise if you have any questions about these intended adjustments to the payment schedules and the escalation payments.

Sincerely,



Ronald Jones  
Vice President  
New Nuclear Operations

Jones/Smith/lw

cc: Ron Jones – SCE&G  
Carlette Walker – SCE&G  
Alan Torres – SCE&G  
Brad Stokes – SCE&G  
April Rice – SCE&G  
Roosevelt Word – SCE&G  
Larry Cunningham – SCE&G  
Dave Lavigne – SCE&G  
Ryan Lamonica – SCE&G  
John Mellette – SCE&G  
Al Bynum – SCE&G  
Kyle Young – SCE&G  
Marion Cherry – Santee Cooper  
Joel Hjelseth – Westinghouse  
William Macecevic – Westinghouse  
Daniel Churchman – Westinghouse  
Daniel Magnarelli - Westinghouse  
Travis Tomb – Westinghouse  
Brian McIntyre - Westinghouse  
Jeff Coward – Westinghouse  
Luke Miller – Westinghouse  
Michael Frankle - Westinghouse  
Susan May – Westinghouse  
Denise Cervenyak - Westinghouse  
Deborah Gries – Westinghouse  
Linda Ackerman – Westinghouse  
Jeff Benjamin – Westinghouse  
Kenneth Hollenbach – CB&I Stone & Webster  
William Wood – CB&I Stone & Webster  
Dave Marcelli – CB&I Stone & Webster  
Randy Harrison – CB&I Stone & Webster  
Mehdi Maibodi – CB&I Stone & Webster  
Terry Stockdale – CB&I Stone & Webster  
Eric Zimmers – CB&I Stone & Webster  
Lucinda Vasbinder – CB&I Stone & Webster  
Tom Moran – CB&I Stone & Webster  
Ian Hunt – CB&I Stone & Webster  
Mike Marconi – CB&I Stone & Webster  
Jessica Dills – CB&I Stone & Webster  
Kenneth Jenkins – CB&I Stone & Webster  
A.J. Marciano – CB&I Stone & Webster  
Joseph Arostegui – CB&I Stone & Webster  
Sean Burk – CB&I Stone & Webster  
Thomas Hopkins – CB&I Stone & Webster  
Jeff Lyash – CB&I Stone & Webster  
VCSNNDCorrespondence@scana.com  
VCSummer2&3ProjectMail@cbi.com  
VCSummer2&3Project@westinghouse.com  
DCRM-EDMS@scana.com

## Message

**From:** Crosby, Michael [/O=EXCHORG/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=MRCROSBY.SANTEECOOPER.COM]  
**Sent:** 9/2/2017 3:59:28 PM  
**To:** Armfield, Jeff [jeff.armfield@santeecooper.com]  
**Subject:** RE: SCE&G PR#1420 SCE&G Bonus Preliminary

We are ... lazy Saturday ... feels good : )

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**From:** Armfield, Jeff  
**Sent:** Saturday, September 02, 2017 3:56 PM  
**To:** Crosby, Michael  
**Subject:** Re: SCE&G PR#1420 SCE&G Bonus Preliminary

Am! Thanks. Hope you are having some quality family time as well.

Jeff Armfield

On Sep 2, 2017, at 3:51 PM, Crosby, Michael <[michael.crosby@santeecooper.com](mailto:michael.crosby@santeecooper.com)> wrote:

Thanks Jeff ... Happy Labor Day weekend ... hope you are playing with the stuffed animals and your sweet baby : )

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**From:** Armfield, Jeff  
**Sent:** Saturday, September 02, 2017 3:47 PM  
**To:** Crosby, Michael  
**Subject:** Re: SCE&G PR#1420 SCE&G Bonus Preliminary

On the face of it I do not see how we pay for exec bonuses related to Summer 2&3 if the bonus was tied to making milestones or some other measure not achieved.

Have not gotten a call from Jimmy and if/when it comes we should ask the judge to weigh in legally.

Thank you

Jeff Armfield

On Sep 2, 2017, at 3:33 PM, Crosby, Michael <[michael.crosby@santeecooper.com](mailto:michael.crosby@santeecooper.com)> wrote:

Mostly as I recall, however ...

Marion and I studied this issue in detail back when I first landed in Nuclear (end of 2011) ... at the time most of the bonus was tied to 2 & 3 performance however, there was a portion tied to EPS which we thought was more than a stretch.

RM supported me ... we took it to the top ... but I ultimately got reamed for sitting on invoices.

Lonnie was not interested in getting involved in the details of the SCANA bonus program ... as long as same (bonuses) were allowed under the Design and Construction Agreement ... which they are.



As you know the timing is more than poor right now.

As a minimum ... I thought it was worth making Addison get in the loop .... understand what his people are doing ... and man-up and ask if he wants to push this.

Regardless ... I know I will get reamed again for sitting on invoices ... would appreciate your advice.

Michael

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**From:** Armfield, Jeff  
**Sent:** Friday, September 01, 2017 2:10 PM  
**To:** Crosby, Michael  
**Cc:** Baxley, Mike  
**Subject:** Re: SCE&G PR#1420 SCE&G Bonus Preliminary

I am assuming the portion of bonus SCANA is invoicing Santee Cooper for is all related to Summer 2&3, correct?

Jeff Armfield

On Aug 31, 2017, at 8:49 PM, Crosby, Michael <[michael.crosby@santeecooper.com](mailto:michael.crosby@santeecooper.com)> wrote:

Heads up Jeff ...

If recent history is any indicator of... It will not take long for Jimmy Addison to be calling or emailing you about this.

As an interesting note ... it always takes SCANA 8 or 9 months to compile invoices for bonuses paid the previous year.

Michael R. Crosby  
 iPhone

Begin forwarded message:

**From:** "Crosby, Michael"  
 <[michael.crosby@santeecooper.com](mailto:michael.crosby@santeecooper.com)>  
**Date:** August 31, 2017 at 4:16:40 PM EDT  
**To:** "Hood, Fritz" <[fritz.hood@santeecooper.com](mailto:fritz.hood@santeecooper.com)>  
**Cc:** "Cherry, Marion"  
 <[marion.cherry@santeecooper.com](mailto:marion.cherry@santeecooper.com)>  
**Subject: RE: SCE&G PR#1420 SCE&G Bonus Preliminary**

Seriously ....

I will not approve this invoice.  
 I may get over-ridden ... but if SCANA cares to push this  
 ... CFOs & CEOs will need to get involved.

Michael

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**From:** Hood, Fritz  
**Sent:** Thursday, August 31, 2017 2:56 PM  
**To:** CHERRY, WILLIAM ([WILLIAM.CHERRY@scana.com](mailto:WILLIAM.CHERRY@scana.com))  
**Cc:** Crosby, Michael; Williams, Jason; Eagerton, Jill  
**Subject:** SCE&G PR#1420 SCE&G Bonus Preliminary

Marion,

SUBJECT: NUCLEAR SCE&G BONUS FOR 2016

Attached is PR #1420 in the amount of \$3,280,921.88 (45% of \$7,290,937.52) per SCE&G's invoice NND-PSA-08-2017-BONUS, dated 08/31/2017. Payment is due on 09/14/2017.

Please approve or otherwise advise. Fh3

## Message

**From:** WILLIAMS, JASON W [JASON.W.WILLIAMS@scana.com]  
**Sent:** 9/12/2017 10:38:23 AM  
**To:** Cherry, Marion [marion.cherry@santeecooper.com]  
**Subject:** [EXTERNAL SENDER] Today

**WARNING:** This e-mail is from an external sender. Use caution when opening attachments and clicking links.

So I talked to April this am and she thinks we need to keep the COLA going. Hopes to get Jeff to answer this by Friday. The entire exec team is in Cayce for hearing prep today.

Skip said ORS knew of the Bechtel report when it came out but was not allowed to see it then. They have documents that it was an agenda item for ORS requesting it but not given the report as it was protected.

Mike hear anything else on his house?

I26 is bumper to bumper going towards CHS today.

\*\*\*\*\*

**WARNING** This e-mail message originated outside of Santee Cooper.

Do not click on any links or open any attachments unless you are confident it is from a trusted source.

If you have questions, please call the Technology Service Desk at Ext. 7777.

\*\*\*\*\*



September 30, 2015

Mr. Danny Roderick  
President & CEO  
1000 Westinghouse Drive  
Cranberry Township, PA 16066

Dear Danny:

On behalf of ourselves and the South Carolina Public Service Authority ("Santee Cooper"), we are pleased to present this non-binding working proposal in response to your term sheet of September 12, 2015. Like your term sheet, this proposal is submitted for purposes of settlement but is preliminary in nature and still being reviewed by our staff. Please also understand that while we will work in good faith to advocate an agreeable proposal, it still must be approved by both our board and the Santee Cooper board, as well as by applicable regulatory authorities.

Terms

1. We would pay a total sum of \$5,569,495,476 for completion of the Project on a fixed-priced basis (not subject to escalation) and in full resolution of any and all outstanding issues, as more fully set forth below:
  - a. This payment will convert all remaining work (all Target, all Firm and the T&M not referenced in this section) under the EPC Agreement to Fixed. The excluded T&M scope and dollars shall include sales tax, performance bond and insurance, mandatory spare parts and extended warranty (beyond the extensions provided for below, which will be at no cost to the Owners). Note that Owner is not claiming credit for all remaining T&M allowances.
  - b. This payment would be in lieu of any additional payments for any of the items on Exhibit A, as well as the cost of the cyber security phase II Change Order and the site layout phase II Change Order (Change Order 26).
  - c. This payment will satisfy the amounts referenced in letters no. VSP\_VSG\_003111, VSP\_VSG\_003115, VSP\_VSG\_3145, VSP\_VSG\_3502 and VSP\_VSG\_3522 (approximately \$83,518,046 as of August 21, 2015).
  - d. This payment will satisfy all amounts in other cases in which the entitlement is in dispute (approximately \$29,729,785 as of August 31, 2015, as set forth on Exhibit B).
  - e. This payment will satisfy the amounts in dispute cases in which there is no dispute but billings have continued because a Change Order has not been executed (approximately \$5,565,845 as of August 31, 2015, as set forth on Exhibit B).
  - f. This payment will satisfy the amounts in dispute in cases in which only the timing is disputed (approximately \$110,190,504 as of August 31, 2015, as set forth on Exhibit B).
  - g. The items in subparagraphs a through f are not an inclusive list, and it is the intent of the parties that this payment is resolution of all outstanding issues and invoices.

- h. Note also that the Owners have paid 90% of the invoiced amount on numerous invoices that they intend to challenge and seek a refund. By entering into the arrangement contemplated herein, the Owners would waive such challenges.
- i. Note also that Owner would waive pending claims arising out of the fuel audit and procurement irregularities.
- j. The \$5,569,495,476 represents the cost to complete the Project beyond what has already been expended through June 30, 2015 in Fixed Price dollars. Payments made after June 30, 2015 would be subtracted before the milestone payments referenced in section 2 below are created.

The foregoing payment is in full and complete settlement and satisfaction of any and all claims currently pending or threatened by either party against the other party. All pending Change Orders and notices of potential Change Orders, including those arising from Uncontrollable Circumstances and Changes in Law, would be resolved. Each party will represent and warrant that it is not aware of the basis of any other claim against the other and that it is not aware of any facts or circumstances that could be expected to give rise to a claim.

- 2. The \$5,569,495,476 set forth above shall be paid according to the milestone schedule to be agreed upon by the parties.
- 3. Westinghouse will specifically identify those items that are not included within the Project scope that is covered by the payment set forth above.
- 4. The Project Schedule stated in the EPC Agreement shall be adjusted so that the Guaranteed Substantial Completion Dates ("GSCDs") are as follows: August 2019 for Unit 2 and August 2020 for Unit 3. All warranties will be extended to two years after the actual Substantial Completion Dates for each unit at no additional cost to Owner.
- 5. Delay Liquidated Damages in accordance with Section 13.1 of the EPC Agreement will commence on the GSCDs set forth in Item 4 above, and shall be computed as follows:
  - a. For the first thirty (30) days following the GSCD: \$200,000/day; and
  - b. For the next thirty-one (31) to ninety (90) days: \$300,000/day; and
  - c. For the next ninety (90) to one hundred fifty (150) days: \$400,000/day; and
  - d. For the next one hundred fifty (150) to three hundred sixty-five (365) days: \$500,000/day; and
  - e. Three hundred sixty-six (366) days or beyond: \$1,000,000/day.
- 6. If a Unit is not "placed in service" before January 1, 2021, Westinghouse will pay the sum of five hundred million dollars per Unit, expressed as a one-time lump sum payment. For purposes of this section, the January 1, 2021 date cannot be extended for any reason, including, but not limited to, Changes in Law and Uncontrollable Circumstances. However, should Congress extend the date by which a unit must be placed in service to qualify for tax credits under section 45J of the Internal Revenue Code, the date will be extended accordingly.

7. The Owners are agreeable to paying Westinghouse a bonus of two hundred thousand dollars per day for each day that each unit is placed in service in advance of the GSCDs. However, for purposes of this section, the GSCDs cannot be extended for any reason, including, but not limited to, Changes in Law and Uncontrollable Circumstances.
8. All pending disputes between the Parties that are not resolved under items 1 and 6 above will be referred to the Dispute Resolution Board described below.
9. The definition of "Change in Law" is changed to reflect the changed definition of that term as used in the July 11, 2012 settlement agreement. Likewise, the term "Uncontrollable Circumstances" will be changed in a similar manner. Westinghouse will warrant that it is not currently aware of any existing facts or conditions that might constitute a Change in Law or an Uncontrollable Circumstance, except for those that are satisfied by this agreement.
10. The parties agree that no new ITAACs have been issued or proposed that would affect the GSCDs or entitle the Consortium to a Change Order.
11. The Parties will participate in meetings with the Nuclear Regulatory Commission ("NRC") and develop strategies in an effort to alleviate issues that have arisen due to the NRC's inspections at the Project while still facilitating the NRC's ability to conduct appropriate inspections. The Owners cannot agree in advance to adopt the Westinghouse position on every issue, but the Owners will work with Westinghouse in good faith. Furthermore, Westinghouse agrees that the Owner will not be responsible for future regulatory support, including obtaining of Government Approvals, under section 4.1 of the EPC Agreement.
12. The holdback allowance in section 8.4(b)(i) of the EPC Agreement is increased from ten percent to fifty percent. However, in part to ensure timely resolution of disputed invoices, the Parties shall revise the dispute resolution procedures in Article 27 of the EPC Agreement to eliminate the requirement to institute litigation during the course of the Project. The Parties agree to the establishment of a Dispute Resolution Board for the interim resolution of disputes. The costs of the Board will be borne equally by the Parties, and any proceedings would take place at the site.
13. Owner is willing to negotiate a cancellation of the Chicago Bridge & Iron Parent Company Guaranty, although the Parties recognize that doing this would substantially increase the risk profile to the Owner and would necessitate a significant commercial concession beyond the terms of this proposal. If an arrangement can be reached, the Owners and S&W will grant to each other a full and final release of all obligations and liabilities under the EPC Agreement. Westinghouse would assume all liability of Stone & Webster. A predicate to these negotiations, however, would be a formal meeting between the Owners and senior officers of Toshiba to allow the Owners to gauge and obtain assurances on Toshiba's commitment to completing the project on schedule. Such an assurance might include Toshiba expanding the current payment Guaranty to include a Performance Guaranty that would commit Toshiba to complete the Project if

Westinghouse is unable or unwilling to do so. Owner would also demand very specific commitments on the Project Schedule.

14. The parties agree to eliminate the concept of "progress payments," including all existing progress payments (e.g., F.1.2, F.1.6.a, F.1.6.b, F.1.6.c) in favor of payments associated with the achievement of defined project milestones.
15. The profit level on any future Change Orders shall be capped at 7 ¾%.
16. Section 13.3 of the EPC Agreement, which provides a potential bonus for additional capacity, is eliminated.
17. The provisions of section 8.6(d) of the EPC Agreement are deleted.
18. The Parties agree to fully cooperate with respect to the involvement of Bechtel as a consultant to the Owner and with the work currently being done and scheduled to be done by Bechtel. Bechtel will be permitted to review all un-redacted Consortium documents that Bechtel shall reasonably request; however, a request made within the scope of Bechtel's engagement shall be deemed reasonable. Owners have previously advised that completion of the Bechtel study is a condition to the execution of a final agreement.
19. Westinghouse will provide the Owners, as well as Bechtel, complete access to its facilities and those of its subcontractors and suppliers, for the purpose of completing the assessment and monitoring the project schedule
20. In the event that Owner should designate Bechtel as its "Owner's Engineer," Westinghouse agrees that it will consent to such designation. Westinghouse further agrees that it will fully integrate Owners' Engineer into the Project going forward until completion of the units and their successful startup.
21. This agreement will also resolve all disputes between the parties relating to unit 1.

The Owners believe that these proposals represent an equitable manner of resolving our disputes and moving forward with the progress of the project. Assuming Westinghouse with these terms, the Owners are prepared to work as diligently as possible to finalize an agreement.

Sincerely,



Kevin B. Marsh

## DRAFT

### June 2, 2015

1. Open the meeting with a frank discussion about project status – modules, productivity, milestones, etc.
2. Review the 90% letter and define how it works
3. We will be engaging Bechtel to perform a 3<sup>rd</sup> party review - ask them to participate – goal of understanding what is causing delays and lack of productivity. Could designate Bechtel as our Owners' Engineer, if necessary.
4. Note we may be willing to pay more, if we understand problems and what is being done to address them.
5. Offer the following proposal ***subject to evaluating*** the final report from Bechtel:

In return for accepting/participating in the 3<sup>rd</sup> party review we will move the guaranteed completion dates for Units 2 & 3 to June, 2019 and June, 2020, respectively. This will release the Consortium from the current liquidated damages payment penalty. (LD value is \$155 million)

We will pay the progress payments currently being withheld (\$90 million)

SCE&G, Santee, and the Consortium (the Parties) will agree on progress/milestones between now and December 1, 2020 as the basis for all future payments.

The Parties will agree to levelized monthly payments between now and the end of the project based on the current cost estimate AND assuming the new milestones are being met.

The Consortium will agree to new liquidated damages limits of \$250 million

SCE&G and Santee will agree to an incentive payment of \$500 million if both new units are online by December 1, 2020 and the project costs is equal to or less than the current cost projection of \$xxx, xxx.



- Schedule ... is the single largest problem
  - Lonnie said it well today
  - Thanks to a good budget ... bad economy ... low HW escalation indices ... Schedule is the only problem we have
    - Authority – currently does not have a \$\$ problem
    - Our partner does ... due to rate recovery thru PSC
  - 2010 forward ... big mask ... called Lake Charles
  - But at the root ... has always be the design element
  - The more we get into the project ... the more that gets exposed
    - OIW
    - SMCI
    - NNI
    - Site – raising the nuclear island
  - Fortunately ... we started making the design argument ... May 2013 ... roll-up letter to Toshiba ... been on this kick for a while
  - Fix the design ... and other areas will start to fall in line
- Bechtel validated this kick ... just the other day
  - WEC / Bechtel ... go way back
    - Helped design and build 2/3 of the existing domestic WEC fleet
  - Very involved with WEC on transition to AP1000
  - Domestic COLAs ... filed them all
  - WEC asked Bechtel to invest in China
    - Couldn't do it ... risk profile too high ... why – design maturity

- Bechtel
  - For profit business ... we all understand that
  - Know the Country needs new base load, emissions free generation
  - They want to help ... obviously smell money moving forward
  - So interest is genuine in helping domestic projects
  - Depth on nuclear bench
    - Maintained over last 3 decades
      - Uprate projects
      - SG replacement
  -
- Bechtel plans to make a run on Vogtle ... and we should pitch the multi-project approach to SCANA
- Projects are clearly ripe ... for outside support
  - Multi-project ... should help ... soften concept for SCANA
  - Problems are identical
  - Economies of scale would be real
  - Potential 8-way cost share:
    - WEC
    - CB&I
    - Authority
    - SCANA
    - Georgia Power
    - Oglethorpe
    - MEAG
    - Dalton
- Frankly ... not sure how the project that does not opt for outside help ... would survive the financial scrutiny
- Next move ... roll-out to Kevin / Steve ... your call
  - Legal considerations ... how best to move forward

### **Message from Santee Cooper CEO**

- Assessment is not ...(and has never been ... intended to position Owners for litigation ... but we are not going to give up our rights to anything.
- Wenick PO approach ... is to protect Consortium from the Southern project.
- We understand the Consortium's sensitivity regarding Southern ... and are fine with developing an Assessment Work Product protected by a privileged and non-discoverable attorney-directed vehicle.
- Our inability to put a simple agreement into place ... leaves the Consortium looking like it has something to hide ... relax!
- The purpose of the Assessment is to make the Owners / Consortium / and Project successful.
- Roderick & Asherman ... clearly understood the purpose of the Assessment and its goal ... and pledged their full support in face-to-face meetings with our CEOs on Jun 10 (Asherman) ... and Jun 17 (Roderick).
- The Owners are going to perform a 3<sup>rd</sup> Party Assessment of this project ... it will be led by Bechtel.
- We are asking the Consortium for its cooperation.
- For the Assessment to be successful ... the Consortium needs to be open and transparent about the project and its issues ... so that solutions can be designed to make us all successful.
- If the Consortium is not going to be open and cooperative with this plan ... unfortunately the Owners will be left with one path forward (litigation) ... and we do not want to go there.

## Current challenges on Project

- **Schedule Adherence**
  - Issue from early on
  - Schedule remains a work in progress
  - Current predictability - only a couple weeks (at best)
  - Consortium - leadership & coordination
  - Other Drivers:
    - Engineering maturity
    - Critical path materials
    - Work planning & site performance

## Current challenges on Project

- **Cost Containment**
  - **Santee Cooper cost of delays (27 mo.) - \$1039 M**
    - **Fuel & Power** **\$210 M**
    - **Owner's Cost** **\$ 90 M**
    - **Debt Service** **\$162 M**  
**\$462 M annually**
  - **30% of EPC at risk**
    - **Target / T&M – are unbounded**
      - **\$130 M – extra cost to Owners over last 12 months**

## Current challenges on Project

- **Consortium**

- **WEC / CB&I - relationship not good for Project, not sustainable**
  - **Commercial terms unfavorable to CB&I**
    - **Issues first surfaced at Lake Charles (2011)**
    - **Problems spilled over to all submodule vendors**
    - **Problems spilled over to the site**
    - **Commercial gap believed to be ~ \$1B**
  - **Project integration - a major issue**
  - **WEC's design maturity - a major driver**
  - **Leadership - turnover has been high**
  - **WEC's choice of Shaw Stone & Webster was not well vetted**
  - **CB&I's acquisition of The Shaw Group lacked due diligence**

## **Current issues with EPC Agreement**

- **Open commercial issues**
- **Scope of work**
- **Contract completion dates**
- **Delay liquidated damages**
- **Payment schedules**
- **Change in Law & Uncontrollable Circumstances**
- **Dispute resolution policy**
- **Toshiba engagement**
- **Change order profit**
- **CB&I Parent Company Guaranty**
- **Cost containment**



## **The proposed WEC deal – what does it fix?**

**Westinghouse intends to acquire (SPA) all the assets of CB&I Stone & Webster needed to complete the V. C. Summer new nuclear project, and to employ Fluor Corporation as a subcontracted construction manager in exchange for the following key terms and conditions:**



## The proposed WEC deal – what does it fix?

- Open commercial issues
  - Clear the deck
  - Mutual release and settlement of all open issues
- Scope to complete project
  - WEC to identify all work items NOT included
- New completion dates
  - Unit 2     Mar 15, 2017   →   Aug 31, 2019
  - Unit 3     May 15, 2018   →   Aug 31, 2020
- Delay liquidated damages (both Units)
  - Increased     \$155,500,000   →   \$676,000,000
    - \$338 M cap per Unit (covers a 2 year delay)
    - \$250 M lump sum for missing PTC deadline (Dec 31, 2020)

## The proposed WEC deal – what does it fix?

- **Early completion bonus**
  - **Bonus still being discussed**
  - **Owners not completely aligned on issue**
- **Milestone Payment Schedule**
  - **Milestones based solely on progress (not time)**
    - **Develop / execute new milestone schedule by May 1, 2016**
- **Disputed invoices going forward**
  - **Exchange for a one time \$75 M advance payment**
    - **Owners pay \$0 on future disputed invoices**
      - **Disputes go straight to Dispute Resolution Board**

## The proposed WEC deal – what does it fix?

- **Change in Law - modified to occur only in the case of:**
  - **Formal written adoption by a Government Authority of a new statute, regulation, requirement or code that did not exist prior to the date of this Amendment.**
  - **Writing produced by a Government Authority evidencing an amendment, revision or changed interpretation of an existing statute, regulation, requirement or code from its status after the date of this Amendment.**
- **Uncontrollable Circumstances - changed so that:**
  - **Only actions by a Government Authority that meet the modified definition of a “Change in Law” would qualify as Uncontrollable Circumstances.**

## The proposed WEC deal – what does it fix?

- **Dispute resolution policy**
  - Eliminate requirement to bring suit during the course of the Project
  - Empanel a Dispute Resolution Board for the interim
- **Toshiba / Fluor executive engagement**
  - WEC agrees to face-to-face meeting with Owner & Toshiba execs
    - Discuss Project concerns
    - Discuss Toshiba's commitment to Project and this Agreement
  - Quarterly progress meetings - Owner, Toshiba, and Fluor execs
- **Change order profit**
  - Profit on future Change Orders reduced 12.36 % → 7.75 %
- **Owner's Engineer**
  - WEC agrees to accept Bechtel as Owner's Engineer

## The proposed WEC deal – what does it fix?

- **CB&I Parent Company Guaranty**
  - Owners shall cancel CB&I's Parent Company Guaranty and grant S&W a full and final release of all obligations and liabilities under the EPC Agreement.
- **Fixed Price Option (100%)**
  - **Total Fixed Price - \$6.082 billion to go after June 30, 2015**
    - Covers entire Scope of Work for the Project
    - All Firm, Target, and T&M cost categories are eliminated
  - **Option Deadline - must be executed on or before May 1, 2017**



## Effect of Releasing CB&I Parental Guaranty



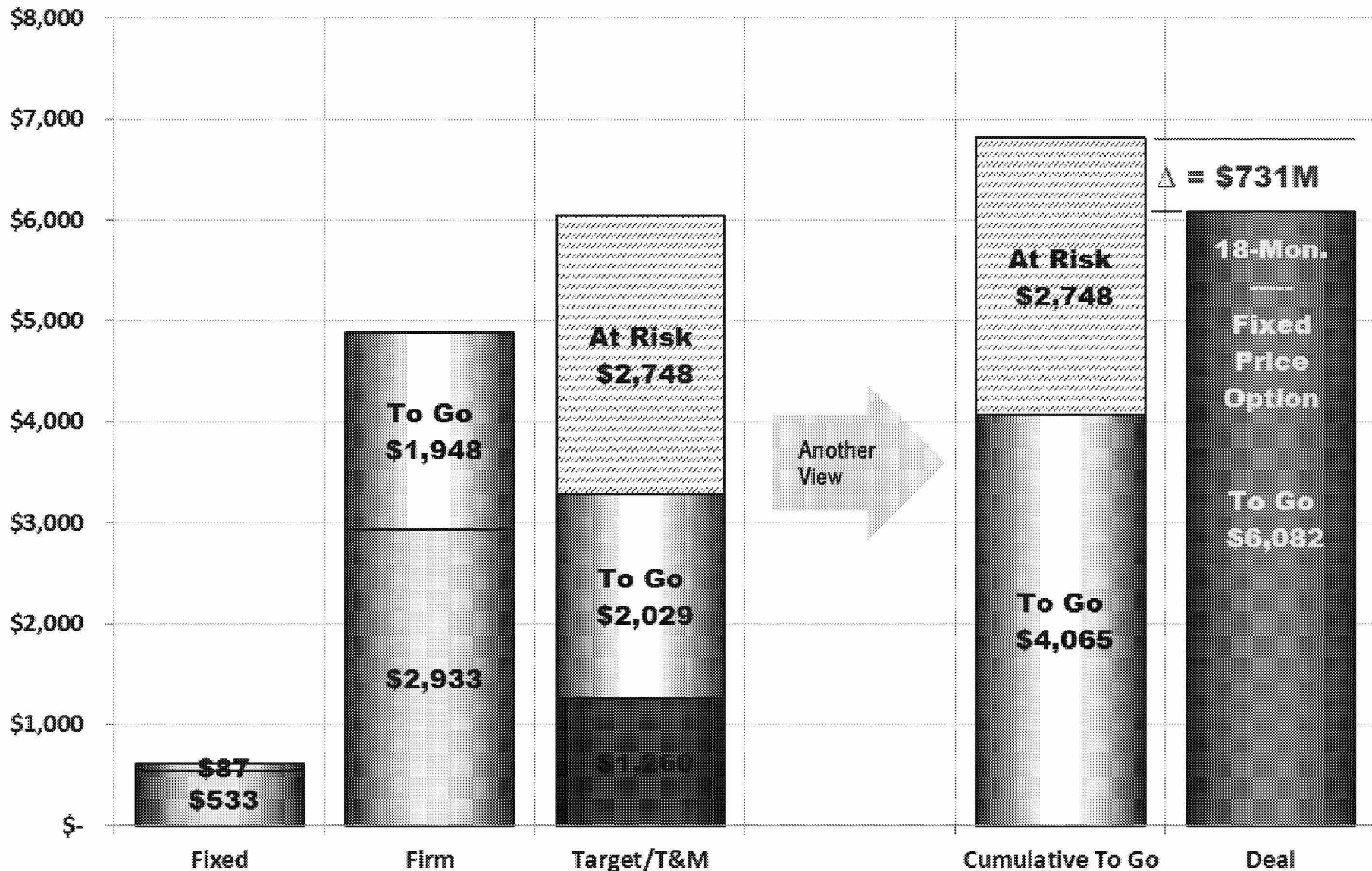
<sup>1</sup> EPC Agreement Article 8.6(a); Exhibits I-1, I-2

<sup>2</sup> EPC Agreement Article 17.3

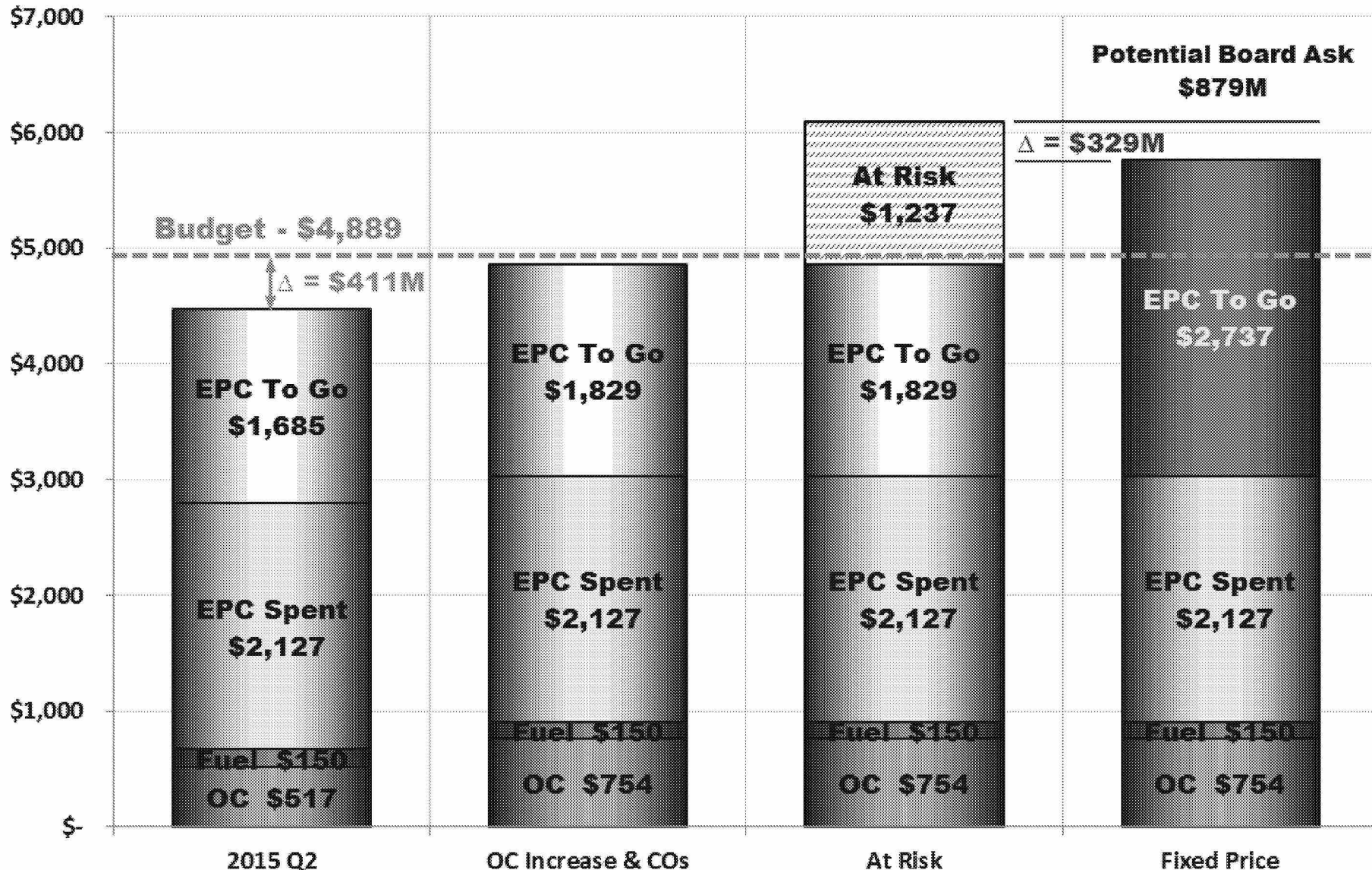
# EPC (100%) vs. Fixed Price Option



santee cooper



# Total Project (45%) vs. Budget





## What risks still exist going forward ?

- **Schedule certainty**
- **WEC / Fluor - leadership & integration**
- **Engineering completion**
- **Certainty on critical path materials**